

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.1338 OF 1999

FROM

WRIT PETITION NO.2547 OF 1999

The Brihan Mumbai Municipal Corpn. ...Appellant.

vs.

1.The General Secretary,
Best Workers' Union & anr. ...Respondents.

Mr.S.K.Talsania with Mr.Saluja i/b. M/s.M.V.Kini &
Co., for Appellant.

Mrs.Neeta Karnik, for Respondents.

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 3rd July, 2007.

P.C.:-

1. By this appeal, the appellant-employer is challenging the order passed by the learned Single Judge of this Court dated 18.10.1999 in Writ petition no.2547 of 1999. By that order,

the learned Single Judge declined to interfere with the order impugned in the writ petition, observing that the conclusion that the punishment awarded to the respondent no.2 workman is disproportionate and harsh is concurrently recorded by both the Courts below, therefore, the writ petition can not be entertained.

2. Perusal of the record shows that the respondent no.2 was in the employment of the appellant as a Conductor. A departmental inquiry was initiated against the respondent no.2. The charge against the respondent no.2 was that he did not issue tickets to the passengers after accepting money. In the departmental inquiry, the charge was held to be proved and ultimately punishment of dismissal from service was awarded. That order was challenged before the Labour Court in Application (BIR (REIN) NO.121 OF 1989. That application was decided by the Labour Court by order dated 5.11.1993. Perusal of the order of the Labour Court shows that the first issue before the Labour Court was "whether the

departmental inquiry is fair and proper?", the second issue was "whether the findings recorded in the departmental inquiry are perverse?", the third issue was "whether the punishment is shockingly disproportionate?". So far as the first and second issues are concerned, the Labour Court has recorded the findings that the inquiry is fair and proper and has found that the finding recorded by the Inquiry Officer are not perverse. In so far as the third issue, viz. Whether punishment is shockingly disproportionate, is concerned, the Labour Court has appreciated the evidence of the witnesses led during the departmental inquiry and has held that the punishment is disproportionate. With the result, the Labour Court interfered with the punishment. According to the Labour Court, the punishment of withholding the back wages will be adequate and therefore, the Labour Court directed reinstatement of the employee without back wages. It appears that that order was challenged in the appeal by both, the employer and the employee. The appeal filed by the employer was Appeal (IC)

no.124 of 1993. That appeal was decided by the Industrial Court by order dated 24.6.1999. The Industrial Court dismissed the appeal. Perusal of the order of the Industrial Court shows that the Industrial Court has held that the Labour Court was justified in interfering with the punishment because, according to the Industrial Court, the misconduct alleged against the employee was for non issuance of ticket for Rs.0.75 paise to the lady passenger. Therefore, according to the Industrial Court the punishment of dismissal was disproportionate. The Industrial Court, thus, agreed with the conclusion reached by the Labour Court that the punishment is shockingly disproportionate and dismissed the appeal. It is this order which was challenged in the writ petition before the learned Single Judge.

3. The learned Counsel appearing for appellant submits that the Labour Court had recorded clear finding that the inquiry is fair and proper and that the findings recorded by the

Inquiry officer are also proper. Having recorded this finding, according to the learned Counsel, the Labour Court was not justified in interfering with the punishment. He further submits that the Industrial Court has not framed any issue on the question "whether the finding recorded by the Inquiry officer is proper or not?". The issue framed by the Industrial Court was "whether the punishment of dismissal from service imposed is just and proper and whether the punishment for dismissal from service is shockingly disproportionate?". The learned Counsel submits that the Industrial Court has also recorded the finding that the charges levelled against the employee have been proved. Therefore, the only question that was considered by the Court was whether the punishment is disproportionate. According to the learned Counsel, the Industrial Court held that the Labour Court was justified in interfering with the punishment only because the amount which was misappropriated is small. The Learned Counsel relies on two judgments of the Supreme Court, one in the case of "Regional

Manager, RSRTC Vs. Ghanshyam Sharma, (2002) 10 Supreme Court Cases 330 and the another judgment of the Supreme Court in the case of 2005(3) Supreme Court Cases 254, Divisional Controller, KSRTC(NWKRTC) vs. A.T.Mane" to contend that the Supreme Court has laid down a law that merely because the amount of money misappropriated is negligible is no reason for the Labour Court to interfere with the punishment imposed because howsoever small the amount misappropriated may be when the amount is misappropriated it results in loss of confidence of the employer in the employee. Therefore, the Labour Court should not have interfered with the punishment. We have also heard the learned Counsel appearing for the employee. The learned Counsel submits that the misconduct itself was not proved against the employee-respondent, and therefore, the Courts below were justified in interfering with the punishment. She also submits that when both the Courts below have concurrently found that the punishment is disproportionate, this Court in writ petition is justified in declining to

interfere with the findings recorded.

4. Now, if in the light of these rival submission one peruses the record, it becomes clear that the Labour Court has recorded a clear finding that the departmental inquiry held against the respondent is fair and proper. He has also held that the findings recorded during the domestic inquiry are also not perverse. In other words, the Labour Court has held that the charges levelled against the respondent have been proved, and thereafter, after recording this finding, the Labour Court went on considering the evidence on record to find out whether the punishment is shockingly disproportionate. In our opinion, the approach adopted by the Labour Court was completely wrong. So far as the Industrial Court is concerned, perusal of paragraph 6 of the order of the Industrial Court shows that the Industrial Court has held that

“It is pertinent to note that as per the findings of the Trying Officer, the Bus Conductor though received the amount of 0.75 paise, he did not issued

the ticket to the lady passenger for destination where the lady was to go i.e. Versova. Therefore, obviously the charges under S.O.20(c) and 20(k) were proved against the Bus Conductor. Now the question before me as to whether for this act of dishonesty, the Bus Conductor if dismissed from his services, the said punishment would be shockingly disproportionate."

Now these observations in the order of the Industrial Court go to show that the Industrial Court agreed with the Labour Court that misconduct against the respondent has been proved, and therefore, the Industrial Court has considered the question whether the punishment of dismissal was shockingly disproportionate to the proved misconduct, and relying on the Law then in force has held that the punishment is shockingly disproportionate and has confirmed the order passed by the Labour Court.

5. So far as the power of the Labour Court to interfere with the punishment awarded by the employer is concerned, that aspect has been

considered by the Supreme Court in its judgment in the case of "A.T.Mane" referred to above. That case was also of a Bus Conductor. After referring to the material available on record and holding that the domestic tribunal has correctly held that the employee involved in that matter was guilty of misconduct, the Supreme Court in paragraph (12) has observed thus:-

" Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment; on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating the corporation's funds, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal."

The above quoted observations of the Supreme Court shows that the quantum of punishment in such a case is not to be decided with reference

to quantum of amount misappropriated, but the question has to be decided with reference to the primary duty of the employee and the employer-employee relationship. The principal job of the conductor is to collect money and if even small amount of money is misappropriated by the Conductor, it is a serious misconduct. The Supreme Court in its judgment in the case of "Ghanshyam Sharma" referred to above has referred to its judgment in the case of "Karnataka SRTC V. B.S.Hullikatti, (2001)2 SCC 574" and has observed thus in paragraphs 4 and 5 of the judgment:-

"4. This Court in Karnataka SRTC V. B.S.Hullikatti has held that in such cases where the bus conductors carry passengers without ticket or issue tickets at a less rate than the proper rate, the said acts would inter alia amount to either being a case of dishonesty or of gross negligence and such conductors were not fit to be retained in service because such inaction or action on the part of the conductors results in financial loss to the Road Transport Corporation. This Court was firmly of the opinion that in

cases like the present, orders of dismissal should not be set aside.

5. Furthermore, we agree with the observations of the Single Judge in the present case that the Labour Court was not justified in interfering with the punishment of dismissal. Though under Section 11-A the Labour Court has jurisdiction and powers to interfere with the quantum of punishment, however the discretion has to be used judiciously. When the main duty or function of the conductor is to issue tickets and collect fare and then deposit the same with the Road Transport Corporation and when a conductor fails to do so, then it will be misplaced sympathy to order his reinstatement instead of dismissal."

In our opinion, in view of the above quoted observations of the Supreme Court, the Courts below viz. The Industrial Court and the Labour Court were not at all justified in interfering with the punishment. In our opinion, therefore, the learned Single Judge was not justified in dismissing the petition.

6. In the result, therefore, the appeal succeeds and is allowed. The order passed by the learned Single Judge dated 18.10.1999 passed in Writ petition no.2547 of 1999 is set aside. The writ petition filed by the appellant is allowed. Rule in that petition is made absolute in terms of prayer clause (B). No order as to costs.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)